

DISCIPLINARY PROCEDURAL RULES OF
THE AMERICAN SOCIETY OF PLASTIC SURGEONS

I. Complaint

Section 1.1 Initiation of Complaint. A complaint alleging that a member has violated the Code of Ethics, Bylaws, Rules or Regulations of the American Society of Plastic Surgeons (the “Society”), or alleging conduct detrimental to the reputation or best interests of the Society, may be initiated by a member of the Society, by the Ethics Committee, or by any third party. Complaints by the Ethics Committee may be based upon the independent knowledge of its members or upon review of publications, printed material or other information involving a member.

All complaints must be in writing and any available supporting evidence shall be submitted to the attention of the Chair of the Ethics Committee. If a complaint is received by the Executive Office of the Society or by an officer, director or trustee of the Society, the complaint shall be forwarded to the Chair of the Ethics Committee.

Section 1.2 Contents of the Complaint. The complaint shall contain the name of the affected member, a description of the alleged violation, including the date(s) or location(s) thereof and shall be supported by specific references to the activities or conduct constituting the grounds for the complaint. In the event the complaint does not contain the requisite specificity, the Ethics Committee shall contact the complaining party to obtain any necessary additional information.

(a) Specific Rule for Complaints Relating to Expert Testimony. A complaint concerning a member’s conduct when providing expert testimony, including the submission of expert affidavits, shall contain, in addition to the information set forth

above in this Section 1.2, one or more specific components of the member's testimony that the complainant believes demonstrate conduct in violation of the Code of Ethics. After citing such components, the complainant shall set forth the reasons why the complainant believes such testimony is in violation of the expert witness testimony provisions of the Code of Ethics. All complaints relating to expert testimony are to be submitted no later than one (1) year from the date of completion of the legal proceedings, including all appeals, to which the testimony applies.

II. Investigation

Section 2.1 Investigative Body. The Ethics Committee shall be the investigative body of the Society and shall be responsible for investigating complaints received or initiated by it. The Ethics Committee may use whatever means it deems necessary or reasonable to conduct its investigations and may obtain the assistance of the Society's staff or any third party in making such investigations.

Section 2.2 Preliminary Investigation. To expedite the investigative process, the Chair of the Ethics Committee may conduct a preliminary investigation or may delegate the preliminary investigation of a complaint to a member of the Committee who shall report his or her conclusions to the Chair. If, after a preliminary investigation, it is determined by the Chair that the complaint is groundless or without merit, the Chair shall notify the complaining party of the decision and the matter will be terminated.

Section 2.3 Full Investigation. If the Chair determines that a preliminary investigation is unnecessary or if, after a preliminary investigation, it is determined that the complaint may have merit, a full investigation shall be made. The Chair thereupon shall by written communication (which may be delivered via e-mail) advise the affected member charged in the

complaint that a complaint or complaints have been filed, that an investigation will be conducted and that he or she will be advised of its results.

The full investigation may be conducted by the Chair or by a Committee member appointed by the Chair. The member responsible for conducting the investigation shall present his/her conclusions along with any supporting information to the Committee. The Chair may request further investigation at such time.

Section 2.4 Discretionary Interview. The Ethics Committee Chair may determine that an interview with the member is appropriate. In such event, the member conducting the investigation, in his/her discretion, may either personally meet with the member under investigation or discuss the issues under consideration with the member by telephone. The member in such instance shall be invited to discuss, explain or refute the charges outlined in the written communication from the Chair. This interview shall not constitute a hearing, shall be preliminary in nature, and none of the procedural rights provided in these rules with respect to hearings shall apply.

III. Conclusion of Ethics Committee

Section 3.1 The Ethics Committee may take action on a complaint at a formal meeting or by telephone conference or other electronic means in which all of the members of the Ethics Committee can hear each other in lieu of a formal meeting.

Section 3.2 The Ethics Committee, after a full investigation, may reach one of the following two conclusions:

(a) It may determine that there appears to the Committee to be an insufficient basis to justify or require action by the Society. In such case the Chair shall so inform the member charged in the complaint and the complaining party.

(b) It may determine that the member may have violated the Society's Code of Ethics, Bylaws, Rules or Regulations, and/or engaged in other conduct detrimental to the reputation or best interests of the Society and that the matter is to be forwarded to the Judicial Council for a hearing.

Section 3.3 In the event the Committee reaches a decision under Section 3.2(b) above, it shall so notify the member in the following manner:

(a) The Ethics Committee shall prepare a written notice identifying the violation or violations and/or other improper conduct with which the member is charged.

(b) The notice and all relevant supporting information shall be sent to the member either (i) by registered or certified mail or other means that provides for proof of delivery, such as overnight delivery service, or (ii) via e-mail to the member's e-mail address on file with the membership department. This notice may advise the member of time, date, place and format of the hearing of the Judicial Council at which the question of disciplinary action is to be considered, or advise the member that additional details will follow as to the time, date, and format of the hearing of the Judicial Council. The notice should advise the member of the right to participate in the hearing, with or without legal counsel and/or such other representatives as he or she may choose, and that member may submit such information as the member deems proper to show that disciplinary action should not be taken. The member's right to participate shall align with the format

of the hearing and the participation of the members of the Judicial Council. By way of example but not limitation, if the Judicial Council is meeting virtually through electronic means in which all of the members of the Judicial Council can see and hear each other, the member shall be afforded the opportunity to participate in the same manner. If the Judicial Council is meeting in-person, the member's right to participate is limited to in-person participation, except that the Chair of the Judicial Council may otherwise approve the member's request to participate via another means of participation (such approval not to be unreasonably withheld).

(c) The written notice shall be sent not less than thirty (30) days prior to the scheduled hearing date.

(d) Copies of the written notice and all materials provided to the member will also be sent to the Chair of the Judicial Council.

Section 3.4 In the event the Committee reaches a decision under Section 3.2(a) above, the complaint or complaints and substantiating information will be placed in the member's file. Any decision pursuant to Section 3.2(a) above does not constitute a finding that the member charged is not guilty of a violation but merely indicates that there was sufficient information to warrant an investigation. If additional information relating to the complaint or complaints investigated by the Ethics Committee arises at a later date, the information contained in the member's file may be used as part of the basis for a charge.

IV. Action If Member Fails to Appear at Hearing or Waives the Right to a Hearing

Section 4.1 If a member either fails to participate in a hearing before the Judicial Council or waives in writing the right to such a hearing, and thereby consents to be disciplined in

accordance with the decision of the Judicial Council, the Judicial Council shall review the materials submitted to it by the Ethics Committee and determine whether a violation has occurred and whether disciplinary action should be taken against the member.

Section 4.2 The Chair of the Judicial Council will determine the format of the meeting of the Judicial Council where the member has declined to participate, or waived in writing the right to a hearing. Such meeting need not be in-person. Regardless of meeting format, the Chair of the Judicial Council shall circulate to all such members the materials submitted by the Ethics Committee. If not meeting in-person, the Judicial Council shall take action by means of a conference telephone or similar communications equipment whereby all members participating in the meeting can hear each other.

Section 4.3 A member who fails to appear at a hearing before the Judicial Council, or waives in writing the right to such hearing, shall be deemed to have accepted the Judicial Council's decision in full and to have waived all rights to appeal such decision to the Trustees of the Society in accordance with the terms of Article XI hereof.

V. Date of Hearing

Hearings before the Judicial Council may be held during the annual meeting of the Society or at such other time and place or format as the Judicial Council may, in its discretion, determine.

VI. Submission of a Written Statement and/or Additional Information Prior to the Hearing

Section 6.1 The charged member may prepare and submit a written statement specifying those matters contained in the information delivered by the Ethics Committee with which the member disagrees and the reasons for such disagreement. This written statement may cover any matter relating to the adverse determination of the Ethics Committee and legal counsel

may assist in its preparation. The charged member may also submit any other relevant information for consideration by the Judicial Council. The written statement and any other relevant information shall be submitted to the Chair of the Judicial Council not less than ten (10) days prior to the date of the hearing.

Section 6.2 The Ethics Committee shall submit for consideration by the Judicial Council any additional information relating to the alleged violation or violations, or other improper conduct, which the Ethics Committee receives subsequent to delivery of the notice of hearing and prior to the date of said hearing. Copies shall at the same time be submitted to the charged member.

VII. Quorum and Manner of Acting

A majority of the members of the Judicial Council shall constitute a quorum and the act of a majority of the members present at a hearing at which a quorum is present shall be the act of the Judicial Council. Conflicted members may be counted for purposes of quorum.

VIII. Conduct of Hearing

Section 8.1 At a hearing before the Judicial Council, a member of the Ethics Committee, who shall be designated to speak for the entire Ethics Committee, shall have the opportunity to present to the Judicial Council the relevant supporting information, including oral and/or written statements, affidavits and witnesses, if any, and to question the charged member and/or any witness presented by the charged member.

Section 8.2 The charged member and/or his or her counsel or other representative shall have the opportunity to be heard, to rebut the information produced by the Ethics Committee, to present and examine witnesses, to introduce written evidence, including written statements and affidavits, to question or challenge any witness presented by the Ethics

Committee and to present such information on the member's behalf as the member deems appropriate to refute the complaint or complaints.

Section 8.3 A record shall be kept of that part of the hearing during which information is presented and the charged member appears. The recording mechanism shall be established by the Judicial Council and may be accomplished by the use of a court reporter, electronic recording unit, or detailed transcription.

Section 8.4 The Society's legal counsel may be present at all hearings conducted by the Judicial Council. The Society's legal counsel shall assist the Judicial Council Chair in addressing procedural questions.

Section 8.5 The purpose of the hearing is to determine whether or not the member has engaged in conduct in violation of the Society's Code of Ethics, Bylaws, Rules or Regulations, or other conduct detrimental to the reputation or best interests of the Society, as more specifically set forth in the written notice from the Ethics Committee. The Judicial Council hearing need not be conducted according to the rules of law relating to the examination of witnesses or the presentation of evidence. All information related to the alleged violation or violations and/or other conduct detrimental to the reputation or best interests of the Society shall be admissible at the hearing, whether or not such information would be admissible in a court of law. The Judicial Council shall be entitled to take into account any such information of the type normally relied upon by individuals of reasonable prudence in the conduct of important personal matters and may rely upon their own expertise and experience as plastic surgeons in evaluating written materials, oral testimony or issues raised during the hearing. The Chair of the Judicial Council shall make all determinations as to the relevance of information sought to be presented, but such

determinations may be overridden by a majority vote of the Judicial Council present at the hearing.

Section 8.6 A hearing may be postponed for good cause in the sole discretion of the Judicial Council. The Judicial Council may, without special notice, recess the hearing and reconvene for the convenience of the participants or for the purpose of obtaining new or additional information or for consultation.

Section 8.7 The procedures for conducting Judicial Council hearings shall generally be as follows:

(a) The Chair of the Judicial Council shall introduce the members of the Judicial Council, the charged member and any representatives and outline the format of the hearing, including the time allotted for the presentation by the Ethics Committee representative and by the charged member and the charged member's representative;

(b) Counsel for the Society shall describe the exhibits submitted by the Ethics Committee and by the charged member;

(c) The Ethics Committee representative shall summarize the complaint, the history of the Ethics Committee investigation, and the section(s) of the Code of Ethics and, if applicable, Bylaws and Rules and Regulations, that the Ethics Committee believes may have been violated;

(d) The charged member shall have the opportunity to question the Ethics Committee representative concerning any aspect of the representative's presentation;

(e) The charged member and the charged member's representative shall have the opportunity to make a presentation to the Judicial Council;

(f) Judicial Council members may ask questions of the charged member and the Ethics Committee representative at any time during the hearing; and

(g) The Judicial Council Chair shall conclude the proceedings and advise the charged member that the Judicial Council will issue a decision within thirty (30) days.

IX. Decision of Judicial Council

Section 9.1 The Judicial Council, in closed session either immediately following the hearing, or shortly thereafter, shall conduct its deliberations and determine whether the member has engaged in the conduct charged. Such determination shall be made not more than thirty (30) days after final adjournment of the hearing.

Section 9.2 The Chair of the Judicial Council shall notify the charged member of the Judicial Council's determination within thirty (30) days after it reaches such determination pursuant to this Section.

X. Action Following Decision of Judicial Council

Section 10.1 No Violation. If the Judicial Council determines that the complaint or complaints are not substantiated and that the member has not engaged in the conduct and/or violation or violations charged, the matter will be terminated and a summary of the action taken will be filed with the member's permanent membership record. The Judicial Council shall notify the Chair of the Ethics Committee of its determination. Such information may not be used by the Society or the Ethics Committee as evidence in any future proceedings against the member.

Section 10.2 Violation. If the Judicial Council determines that the complaint or complaints are substantiated and that the member has engaged in the improper conduct and/or the violation or violations charged, the Judicial Council may prescribe one or more of the forms of disciplinary action outlined in Article XII. If the member does not appeal the decision of the Judicial Council pursuant to the provisions of Article XI, or if the member is unable to appeal the decision due to the member's failure to appear at the Judicial Council hearing, the decision shall become final at the end of the thirty (30) day appeal period. At or about the same time, the Judicial Council shall notify the Chair of the Ethics Committee, the President of the Society and the Executive Office of the Society of the decision.

XI. Appellate Procedure

Section 11.1 Request for Review. The Trustees shall act as the appellate body of the Society. Unless the member failed to participate in the hearing before the Judicial Council hearing, or waived in writing the right to such hearing, a disciplined member may request appellate review by the Trustees of a decision of the Judicial Council within thirty (30) days after receipt of notice thereof. Such request shall be in writing, shall be sufficiently definite to notify the Trustees that an appeal is being requested, and shall be sent by registered or certified mail or other means, such as an overnight delivery service, that provides for proof of delivery, to the Chair of the Trustees at the Executive Office of the Society. If such appellate review is not requested within thirty (30) days, the member shall be deemed to have waived the right to an appeal and to have accepted the decision of the Judicial Council.

Section 11.2 Scope of Appellate Review. Appellate review shall be held on the record on which the adverse decision of the Judicial Council was based together with a written statement pursuant to Section 11.5 below, unless the member requests permission to make an

oral presentation to the Trustees, in which case the oral presentation shall become a part of the record. In no event shall a member be permitted to raise a substantive issue that was not presented to the Judicial Council and reflected in the record of the hearing.

Section 11.3 Scheduling the Review. Upon receipt of a request for appellate review pursuant to Section 11.1 above, the Trustees shall schedule the review. At least thirty (30) days prior to the review, the Trustees shall notify the Chair of the Ethics Committee and the member at the e-mail for the member on file with the membership department or by registered or certified mail or other means, such as an overnight delivery service, that provides for proof of delivery of the time, date, and format of the meeting.

Section 11.4 Quorum. Two-thirds of the Trustees shall constitute a quorum and the act of a majority of the Trustees present at a meeting at which a quorum is present shall be the act of the Trustees. Conflicted Trustees may be counted for purposes of quorum.

Section 11.5 Member's Written Statement. The member may prepare and submit a written statement, in which those factual and procedural matters with which the member disagrees and the reasons therefor shall be specified. Such statement may address any matter raised at any step in the process to which the appeal is related. The statement may not address a matter that was not previously raised before the Judicial Council. Member's legal counsel or other representative may assist in preparation of the written statement. Such statement shall be submitted to the Trustees through its Chair at least ten (10) days prior to the scheduled date of the review. A member who has requested review pursuant to Section 11.1 above shall have access to the decision letter and transcript of the Judicial Council and to all other written materials that were considered by the Judicial Council in making the adverse decision.

Section 11.6 Ethics Committee Written Statement. If the member submits a written statement, then a similar written statement may be submitted by the Ethics Committee to the Chair of the Trustees. The scope of any statement submitted by the Ethics Committee shall be limited to issues raised during the Judicial Council hearing. If submitted, the Chair of the Trustees shall provide a copy thereof to the member at least five (5) days prior to the scheduled date of the review.

Section 11.7 Oral Presentation. If a member requests permission to make an oral presentation pursuant to Section 11.2 above, the member and/or the member's legal counsel or other representative shall be permitted to speak against the adverse decision and to answer questions from any Trustee. The member's format for such presentation shall align with the format of the meeting of the Trustees for the review. By way of example but not limitation, if the Trustees meet virtually through electronic means in which all of the Trustees can see and hear each other, the member shall be afforded the opportunity to present in the same manner. If the Trustees meet in-person, the member shall present in-person, except that the Chair of the Trustees may otherwise approve the member's request to participate via another means of participation (such approval not to be unreasonably withheld).

Section 11.8 New or Additional Matters. Information not presented during the hearing before the Judicial Council or otherwise not reflected in the record shall not be introduced during the appellate review.

Section 11.9 Review. The Trustees shall review the record, including any written statements submitted pursuant to Sections 11.5 and 11.6 above, and shall determine whether the decision of the Judicial Council is substantiated.

Section 11.10 Decision. Within thirty (30) days of the conclusion of its review, the Trustees shall determine by the affirmative vote of a majority of the Trustees participating in the review whether to uphold, modify or reject the decision of the Judicial Council. The term “modify” shall mean that the Trustees may impose more lenient discipline than that imposed by the Judicial Council but the Trustees may not find additional violations or impose more stringent discipline.

The Trustees may only modify or reject a decision of the Judicial Council that it determines is either (1) unsupported by substantial evidence or (2) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the Society’s Code of Ethics, Bylaws, or Disciplinary Procedures.

Section 11.11 Notice of the Decision. The Chair of the Trustees shall send notice of the decision of the Trustees to each of the following: the member, the Chair of the Ethics Committee, the Chair of the Judicial Council, the President of the Society, and the Executive Office of the Society.

XII. Forms of Discipline

The disciplinary measures which may be imposed upon a member may include, but are not limited to, one or more of the following:

Section 12.1 Censure.

(a) Private. A written letter of censure advising the member that he or she has been found guilty of the conduct and/or the violation or violations charged, expressing appropriate concern and proposing greater sanctions if a future violation occurs. The private letter of censure shall be furnished to the American Board of Plastic Surgery. It

shall also be furnished to the individual initiating the complaint, provided such individual agrees in writing to maintain the confidentiality of the discipline. The fact that a member received a private letter of censure shall be disclosed to the ASPS/PSF Nominating Committee for candidates under consideration for an elected or appointed position. The private letter of censure shall not be otherwise distributed or disclosed.

(b) Public. A written letter of censure similar in form to (a) above that is distributed with a summary notice to each member of the Society.

Section 12.2 Probation. The member will be allowed to attend the meetings of the Society and vote but may not hold office or be appointed to working committees during the period of probation. Probation shall not affect the member's obligation to pay membership dues during the period of probation. The probation shall be announced in a notice distributed to each member of the Society.

Section 12.3 Suspension. The member will be allowed to attend the meetings of the Society, but may not claim membership in the Society, vote, present and/or discuss scientific material, hold office, use the Society logo or brochures, participate in the Society referral service, or be appointed to working committees during the period of suspension. Suspension shall not affect the individual's obligations to pay membership dues during the period of suspension. The suspension shall be announced in a notice distributed to each member of the Society.

Section 12.4 Expulsion. The member's relationship with the Society shall be severed and all rights and privileges of membership terminated. The expulsion shall be announced in a notice distributed to each member of the Society. An expelled member may reapply for

membership in the Society no earlier than three (3) years following the effective date of the expulsion.

XIII. Summary Action in the Event of Suspension or Termination of a Member's Right to Practice Medicine

Where a member's right to practice medicine is suspended or revoked in any state, province or country by action of the applicable medical board or licensing authority, the member's membership status in the Society shall be similarly suspended or revoked.

A member's membership status in the Society shall be suspended or revoked concurrent with the duration of the suspension or revocation of the member's certification by the American Board of Plastic Surgery, the Royal College of Physicians and Surgeons of Canada or the Corporation Professionnelle des Medecins du Quebec.

The Chair of the Judicial Council will notify the member, in writing, within thirty (30) days of taking any action under this provision. Within thirty (30) days of receipt of that notice, the member may request a review by the Society's Judicial Council of the decision to suspend or terminate his/her membership. Such request shall be sent to the Chair of the Judicial Council. If the member does not request a review within thirty (30) days, the member shall be deemed to have waived the right to review and to have accepted the decision of the Council.

The suspended or terminated member shall be responsible for notifying the Society when the period of license or Board-certification suspension or revocation has ended and when the individual's right to practice medicine or Board-certification has been fully reinstated. The individual shall be responsible for demonstrating to the satisfaction of the Judicial Council that he or she satisfies the Society's requirements for membership before being reinstated.

EFFECTIVE DATE OF THIS POLICY: Adopted _____; latest revision October 15, 2020

POLICY SPONSOR: Keith Hume, Senior Vice President Programs and Policy

APPROVING BODY: ASPS / PSF Board of Directors

AUTHORIZED SIGNATORIES: Lynn L. C. Jeffers, MD, MBA ASPS President and C. Scott Hultman, MD, MBA, PSF President

NEXT REVIEW DATE: October 2023